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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

CARLOS FLORES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

NIKKISO AMERICA, INC., a Delaware
Corporation; ACD, LLC, a California
Limited Liability Company; CRYOGENIC
INDUSTRIES, INC., a Delaware
Corporation; CRYOGENIC INDUSTRIES
SERVICE COMPANIES, LLC, a
California Limited Liability Company;
CRYOQUIP, LLC, a California Limited
Liability Company; COSMODYNE, LLC,
a California Limited Liability Company;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CVRI2204626
*[Assigned to Hon. Harold Hopp, Dept 1, for all
purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: June 18, 2024

Time: 8:30 a.m.

Dept.: 1

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge

1 of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for
2 Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would
3 competently testify thereto.

4 **COUNSEL'S EXPERIENCE**

5 2. I have been a member, in good standing, of the State Bar of California since 2001.
6 I am admitted to practice in the United States District Courts for the Central and Southern
7 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
8 courts in California.

9 3. I have handled over 500 employee vs. employer litigation matters during my 23
10 years in practice. Over the last 15 years, my practice has almost entirely consisted of
11 representing employees, the majority of which has included class action and representative
12 action wage and hour matters. In total, I have handled over 250 class action and representative
13 action wage/hour cases, and have been appointed by the court as class counsel and have received
14 final court approval and judgment in close to half of those actions to date, and anticipate
15 receiving final approval in many more of those in the future.

16 4. As part of these settlements and judgments, I have recovered in excess of \$250
17 million in damages for my clients and the class members (who often work as nurses, ambulance
18 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
19 countless other trades). At one point, my team and I held the record for the largest known
20 PAGA-only case in California's history - a \$12.5 million-dollar court approved settlement,
21 which followed extensive litigation, summary adjudication and writs to the CA Supreme Court
22 against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior Court).

23 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
24 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
25 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
26 against Walmart that was tried to the jury in District Court for the Central District, wherein the
27 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
28 were appealed.

1 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
2 the May 2023 issue of Consumer Attorneys of Southern California (a recognition given to 17
3 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
4 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
5 only 5% of lawyers receive.

6 **BRIEF SUMMARY OF THE SETTLEMENT**

7 7. Following mediation, Plaintiff and Defendants (collectively, the “Parties”)
8 eventually entered into a Class and PAGA Settlement Agreement and Release of Claims
9 resolving the wage and hour claims of the putative class (the “Settlement Agreement” or “S.A.”),
10 which is attached hereto as **Exhibit A**. The Parties are in the process of getting the Settlement
11 Agreement executed, and I will file a supplemental declaration with the fully signed version as
12 soon as it is available.

13 8. The Settlement Agreement seeks to release and discharge Defendants from the
14 claims brought against it in exchange for Defendants’ agreement to pay \$460,000 on a non-
15 reversionary, non-claims made basis (each Class Member will receive his/her share of the Net
16 Settlement Amount without having to submit a claim form or take any action, except for those
17 who opt-out).

18 9. Plaintiff brought the claims herein against several business entities based on the
19 allegation that all companies were liable for the acts of the others under California law as “joint
20 employers” and/or an “integrated enterprise.” However, during litigation, Defendants and their
21 counsel provided information showing that the joint claims against all entities under the
22 “corporate umbrella” of Nikkiso America must end on December 31, 2019, because, after that
23 date, Defendants completely separated each entity from one another, both in policies and
24 practices. Thus, the Parties mediated and settled claims on behalf of two distinct classes of
25 employees, the ACD Class and Cryogenic Class, which are further defined as follows in the
26 Settlement Agreement:

- 27 a. “ACD Class” means all current and former nonexempt (hourly paid)
28 employees employed by Defendant ACD, LLC (which also does business

in California as ACD and Nikkiso ACD) in California during the ACD Class Period of January 1, 2020, through January 16, 2024.

b. “Cryogenic Class” means current and former nonexempt (hourly paid) employees employed by Defendants Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC in California during the Cryogenic Class Period of October 25, 2018, through December 31, 2019

10. Under the terms of the Settlement Agreement, Defendants will not oppose Plaintiff Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement Amount, litigation expenses not to exceed \$25,000, Settlement Administrator Costs of \$9,000, and PAGA penalties of \$30,000 (with 75% to the LWDA and 25% to the Aggrieved Employees on a pro rata basis). After subtracting these deductions from the Settlement Amount, approximately \$242,666.67 will be available to pay individual settlement amounts to approximately 315 Class Members who do not opt-out of the settlement, as follows:

<i>Settlement Amount</i>	\$ 460,000.00
Attorneys’ Fees (1/3)	\$ 153,333.33
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs	\$ 9,000.00
PAGA Penalties	\$ 30,000.00
Class Representative Service Award	\$ 0
<i>Net Settlement Amount</i>	\$ 242,666.67

11. The Net Settlement Amount will be paid to the Class Members on a Work Week basis, calculated by looking to the relative number of weeks worked by each class member in certain time periods. And each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Work Weeks he/she is credited with working during the applicable periods. True and correct copies of the Class Notice, Request for Exclusion Form, Objection Form and Dispute Form are attached hereto as **Exhibits B, C, D and**

1 E, respectively.

2 **PROCEDURAL BACKGROUND**

3 12. My office has performed considerable work and diligently investigated and
4 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
5 significant settlement fund for the benefit of the Class. We efficiently communicated and
6 exchanged information informally with Defense counsel which enabled the parties to
7 successfully settle the case. Because of the risks involved in litigating the case and the contested
8 legal and factual issues, my office believes this settlement to be fair, reasonable, and adequate.

9 13. After being retained by Plaintiff, we submitted a letter to the Labor and
10 Workforce Development Agency (“LWDA”) for civil penalties under the Private Attorneys
11 General Act of 2004 (“PAGA”), and simultaneously sent a letter to Defendants requesting the
12 production of personnel and timekeeping records to further evaluate his wage and hour claims. A
13 true and correct copy of Mr. Flores’s LWDA Notice Letter is attached hereto as **Exhibit F**.

14 14. On October 25, 2022, Plaintiff Carlos Flores filed the instant class action against
15 Defendant Nikkiso America, which he also amended on about November 22, 2022, to add all
16 Defendants to the Action. Then after the 65-day exhaustion period without the LWDA asserting
17 jurisdiction over the PAGA claims, Plaintiff filed the operative second amended Complaint,
18 alleging class and representative action claims, including: (1) failure to pay minimum wages, (2)
19 failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest
20 breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages upon
21 separation of employment, (7) failure to provide accurate itemized wage statements, (8) unfair
22 and unlawful competition, and (9) related PAGA claims. Defendants filed their Answer to the
23 Second Amended Complaint on about March 7, 2023.

24 15. Defendants retained counsel and immediately began to defend the case. In turn,
25 Plaintiff served written discovery on Defendants. Then, after discussions among counsel, the
26 Parties agreed to attend private mediation.

27 16. In preparation for mediation, the Parties informally exchanged documents and
28 information that allowed both sides to calculate the potential damages and evaluate potential risk,

1 including policies and procedures pertaining to the claims, statistics relating to the number of
2 current and former employees, number of shifts, weeks worked and other things, and a sampling
3 of payroll and timekeeping records for Class Members. This information enabled both parties to
4 take a deep dive into the claims. Additionally, during this process, Plaintiff and his counsel
5 analyzed, researched, and investigated the potential issues, including matters related to the
6 calculation of damages, trial, and appellate issues and risks.

7 17. On January 16, 2024, the Parties participated in a full-day mediation with Eve
8 Wagner, a highly-respected wage-and-hour mediator. At the conclusion of mediation and
9 extensive arms-length negotiations, Ms. Wagner issued a mediator's proposal which the Parties
10 accepted and entered into a Memorandum of Understanding. The Parties later entered into the
11 Settlement Agreement submitted herewith, and now seek the Court's preliminary approval of the
12 Settlement.

13 **SUMMARY OF THE CLAIMS AND DEFENSES**

14 18. Plaintiff alleged numerous wage and hour violations on behalf of the Class.
15 However, Defendant vigorously contested and denied each of Plaintiff's material allegations on
16 the merits and as to the propriety of a class action or PAGA representative action. Still, Plaintiff
17 believed there were several strong claims.

18 19. For instance, Plaintiff alleged Defendants failed to pay proper wages due to
19 several distinct wage violations. First, Plaintiff alleged that Defendants paid the Class on an
20 hourly basis plus additional earned compensation but failed to include this compensation in the
21 regular rate calculations and overtime pay. Second, Plaintiff alleged that Defendants failed to
22 pay for all compensable hours due to a policy that "auto-deducted" 30 minutes from the shifts of
23 Class Members when no meal period was recorded, without inquiry into whether a meal
24 occurred or cut short. As a result, Plaintiff argued these violations resulted in unpaid minimum
25 wages and overtime, as well as waiting time penalties under Labor Code § 203 and other
26 derivative penalties. However, Defendants opposed each of these unpaid wage claims on the
27 merits and as to the propriety of class certification.
28

20. Plaintiff also alleged that he and the Class Members were often denied compliant meal and rest breaks due to the nature of the work. However, Defendants argued that they provided and made all mandated meal and rest breaks available to the Class, and any employee who did not take a break did so entirely of their own volition. Thus, Defendants argued that these claims were without merit because, for each violation, a fact-finder would have to determine why a break was noncompliant, because if it was by the employee's choice, no liability attaches to Defendants.

21. Moreover, Plaintiff alleged other claims, such as the failure to reimburse business expenses (based on the allegation that Class Members were required to purchase and provide their own tools to carry out tasks, without reimbursement). But Defendants disputed all such claims on the merits and as to the propriety of class certification.

22. Despite the disputed nature of the claims, the Parties concluded that further litigation of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled to limit further risk, expense, and protracted litigation.

CMO COMPLIANCE

23. In accordance with CMO ¶ G, this section will specifically identify and address each CMO requirement. This information was compiled with the assistance of Peter Carlson, who was responsible for preparing the pre-mediation data and calculations, and primarily assisted in the preparation of the *Kullar* analysis. As such, the following is based largely on information and belief, as it was largely prepared with Mr. Carlson's assistance (but I reviewed all of the information).

CMO ¶ G(3)(a)(i)

24. Based on information obtained in formal discovery and through informal discovery before mediation, I estimate that there will be approximately 315 individuals that fall within the Class definition and 200 of those individuals are also PAGA “Aggrieved Employees.”

CMO ¶ G(3)(a)(ii), CMO ¶ G(3)(a)(iii), CMO ¶ G(9)(b)

25. The following paragraphs provide the maximum and risk-adjusted value for each claim, and this includes all claims on a class and PAGA basis as required by the CMO.

1 26. The calculations below are based upon data points obtained through formal and
2 informal discovery, from which my firm estimated the following through mediation: (1) 315
3 Class Members, (2) 130 *former* Class Members for purposes of Labor Code § 203, (3) 24,378
4 workweeks, (4) 120,053 shifts worked, (5) \$25.25 average hourly rate of pay, and (6)
5 approximately 10,782 wage statements during the PAGA Period.

6 ***Unpaid Wage Claims (Minimum and Overtime)***

7 27. Plaintiff alleged two unpaid wages on behalf of the Class: (1) Defendant paid the
8 Class on an hourly basis plus additional earned compensation but failed to include this
9 compensation in the regular rate calculations and overtime pay, and (2) Defendant failed to pay
10 for all compensable hours due to the failure to accurately record all hours worked.

11 28. As to the first unpaid wage claim, Plaintiff and the Class Members were paid on
12 an hourly basis along with nondiscretionary bonuses and other earned compensation. However,
13 Plaintiff alleged that, on the occasions that a Class Member earned additional compensation and
14 worked overtime during the time period when such compensation was earned, Defendants did
15 not include the compensation in the regular rate (*i.e.*, Defendants only paid overtime at 1.5 times
16 the base rate). Thus, Plaintiff alleged that this led to a failure to pay all overtime owed.
17 However, Defendant raised several defenses to this claim, including that the bonuses did not
18 qualify as “nondiscretionary” and, thus, did not need to be included within the regular rate and
19 overtime calculations. Additionally, Defendants argued that, even if the claims had merit (which
20 they did not concede), the valuation was small, as only a small percentage of Class Members
21 received bonuses and overtime in the same workweek.

22 29. As to the second unpaid wage claim, Plaintiff argued that he and the Class
23 Members were subjected to an “auto-deduct” policy where they often were unable to take meal
24 periods (or take the full 30 minutes), and they did not record meal periods in the timekeeping
25 system, yet Defendants automatically deducted 30 minutes from their daily shifts on each such
26 occasion, without ever making an inquiry into whether the meal period occurred or was a full 30
27 minutes. As a result, Plaintiff argued that he and other Class Members were subjected to unpaid
28 minimum and overtime wages on each such occasion. However, Defendants vehemently

1 opposed this claim, arguing that there was no “auto-deduct” practice and, moreover, that the
2 Class Members were provided and took compliant meal periods at all times – regardless of what
3 the timekeeping records reflected. As such, Defendants argued that this was the prototypical
4 type of claim for which certification should be denied because of individualized inquiries.

5 30. CMO ¶ G(3)(a)(ii): we calculated the maximum potential damages for the unpaid
6 minimum and overtime wages as \$191,305. This was calculated as \$50,000 for the regular rate
7 violations [based on analysis of unpaid amounts plus interest owed], plus \$141,305 owed for the
8 “auto-deduct” claim. And the value of this “auto-deduct” claim was calculated by multiplying
9 the number of violative workweeks (5,555) by the alleged number of unpaid hours per week (0.5,
10 equal to one auto-deduct per week) by the applicable rate of pay (\$50.875; because the average
11 shift was over 8 hours, the rate for unpaid wages was the overtime rate [\$25.25 x 1.5] plus
12 liquidated damages of \$13 per hour under Labor Code § 1194.2) [5,555 weeks x 0.5 unpaid
13 hours per week x \$50.875 per hour = \$837,264].

14 31. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of these unpaid
15 minimum and overtime claims as \$122,435. Defendant vehemently opposed these unpaid wage
16 claims on the merits and as to the propriety of class certification. Due to the defenses and
17 arguments raised, Plaintiff assigned a 20% risk for each respective unpaid wage claim at the
18 class certification stage and an additional 20% risk on the merits.

19 32. CMO ¶ G(9)(b): as for the PAGA penalty claims on these issues, Plaintiff
20 calculated the maximum potential PAGA penalty at trial as \$539,100 based on a 50% violation
21 rate for 10,782 wage statements issued during the period. We placed the same merits risk (20%)
22 on PAGA as we did the class claims. However, we recognize that there were certain factors that
23 reduce the possible value at trial. Specifically, when considering the amount of discretionary
24 reduction to apply against the maximum penalties, we believe the Court would consider that: (a)
25 if this claim succeeded, the Class would already be receiving compensation for the same
26 violations [and would thus apply a smaller penalty because otherwise it is a double penalty], and
27 (b) there were several “good faith” defenses. As a result, we assumed a PAGA risk-adjusted
28 value of \$50,000.

Meal and Rest Break Claims

33. Plaintiff also alleged meal and rest break claims against Defendant, and this section provides CMO-compliant information as to the value and basis for such claims.

34. CMO ¶ G(3)(a)(ii): we calculated the maximum potential damages as follows. For the meal period claims, we calculated 94,602 violations (based on 78.8% violation rate in the sampling) and multiplied that by \$25.25 (the applicable premium rate under Labor Code § 226.7) to arrive at maximum potential damages of \$2,388,695. For the rest break claims, we calculated 60,027 violations (50% violation) and multiplied that by \$25.25 to arrive at maximum potential damages of \$1,515,669.

35. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of the meal period claims as \$725,289 and for the rest break claim as \$388,794. These risk-adjusted figures are based on the numerous defenses and risks attached to such claims. For instance, Defendants raised numerous arguments in response to this claim, including that it maintained fully compliant written policies and specifically authorized the Class Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a short/late break. Therefore, Defendants asserted that a fact-finder would have to determine for each Class Member whether a break was missed and why, and why a break was noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to Defendants. These issues raise questions regarding whether the meal and rest break claims could be certified, and Plaintiff placed a 50% risk at the class certification stage for meal periods and rest breaks. These defenses also go toward the merits given the evidentiary question of proving the number of meal and rest violations. As such, Plaintiff placed a 50% risk on the merits for meal breaks, and an additional 50% risk on the merits for rest breaks. This returns risk-adjusted values for meal periods of \$597,173 [$\$2,388,695 \times 50\% \text{ class cert risk} \times 50\% \text{ merits risk}$] and for rest breaks of \$378,917 [$\$1,515,669 \times 50\% \text{ cert risk} \times 50\% \text{ merits risk}$].

36. CMO ¶ G(9)(b): as for the PAGA penalty claims on these issues, Plaintiff calculated the maximum potential PAGA penalty at trial as \$974,693 for meal period (based on 90.4% violation rate) and \$1,078,200 for rest breaks based on a 100% violation rate for the

1 10,782 wage statements issued during the period multiplied by \$100. But these claims faced the
2 same merits and evidentiary risks discussed above, so we applied a 50% risk on the merits for
3 each claim. Then we also assumed that the Court, when considering what discretionary
4 reduction to apply, would give credit to Defendants' attempt to enact and apply a compliant
5 written meal and rest period policy. And, as a result, we estimated that the Court would apply a
6 large discretionary reduction and we assumed risk-adjusted PAGA values of \$120,000 for meal
7 periods and \$100,000 for rest breaks.

8 *Wage Statement Claims*

9 37. Plaintiff alleged that, because of the unpaid wage and meal/rest violations above,
10 Defendants' wage statements failed to accurately reflect the gross and net wages payable.

11 38. CMO ¶ G(3)(a)(ii): based on the formula under Labor Code § 226(e) (\$50 for
12 initial violation and \$100 for subsequent violations), we calculated the maximum class wage
13 statement penalties as \$1,068,200 (200 "initial" violations at \$50 and 10,582 "subsequent"
14 violations at \$100 $[(200 \times \$50) + (10,582 \times \$100)] = \$1,068,200$).

15 39. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of the class wage
16 statement claims as \$311,710. This analysis incorporated Defendants' arguments and defenses
17 from above, and also accounted for the fact that these were "derivative" as opposed to "direct"
18 wage statement violations (*i.e.*, because these claims were entirely derivative of the claims
19 above, they only had merit if the claims for unpaid wages or meal/rest breaks were successful).
20 Moreover, Defendants argued that "derivative" violations cannot trigger liability under § 226
21 and, even if there was a "technical" violation, Plaintiff would be unable to prove the required
22 "knowing and intentional" and "injury" elements. Based on these facts and defenses, we placed
23 a 30% risk at class certification (in line with the claims on which the derivative wage statement
24 claim was based) and estimated another 50% risk on the merits, leading to a risk-adjusted value
25 for the derivative claims of \$373,870 $[\$1,068,200 \times 30\% \text{ cert risk} \times 50\% \text{ merits risk}]$.

26 40. CMO ¶ G(9)(b): as for the PAGA penalty claims on these issues, Plaintiff
27 calculated the maximum potential PAGA penalty at trial as \$1,078,200 for wage statement
28 claims based on a 100% violation rate for the 10,782 wage statements issued during the period

multiplied by \$100. However, like above, the risk-adjusted value must consider the difference between the direct and derivative claims. Thus, we applied the same 50% merits risk and, even though there is no requirement for “knowing and intentional” under PAGA, we assumed that the Court would apply a large discretionary reduction based on Defendants’ likely argument (if liability was found) that they were already liable for damages to the Class and for PAGA penalties for the overarching violations that triggered the derivative wage statement violations. Thus, Plaintiff assumed risk-adjusted PAGA penalties for § 226 of \$100,000.

Waiting Time Penalty Claims

41. Plaintiff’s claim for failure to timely pay final wages (and for waiting time penalties under Labor Code § 203) was entirely derivative of the claims above (*e.g.*, because Defendants failed to pay all wages and premiums owed, Defendants did not timely pay all final wages owed because there are still amounts due and payable).

42. CMO ¶ G(3)(a)(ii): we calculated the maximum potential value of this claim as \$846,885 based on 130 *former* employees who were paid \$217.15 per day (130 employees x \$217.15 daily pay x 30-day penalty).

43. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of the waiting time penalty claim as \$88,200. The valuation had to account for the fact that this claim was derivative of the unpaid wage and meal/rest break claims and, if those claims failed at certification or on the merits, there would be no waiting time penalties owed, so the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to prove that the violations (if any existed) were “willful” under the meaning of Labor Code § 203. And, here, Defendants argued there was no “willful” violation since they had compliant written policies and any deviations therefrom were inadvertent and unintentional. Additionally, Defendants argued that these facts give rise to a “good faith” defense that prevents imposition of the waiting time penalties. As a result of this analysis, Plaintiff’s counsel applied a 40% risk at class certification and a 60% risk on the merits, setting a risk-adjusted value of \$203,252.

1 44. CMO ¶ G(9)(b): as for the PAGA penalty claims, Plaintiff calculated the
2 maximum PAGA penalty at trial as \$5,000 (50 violations x \$100). But we had to incorporate the
3 same risks as above (60% on the merits) and also assumed that, given Defendants' good faith
4 attempts at compliance with California law, that the Court would also apply a discretionary
5 reduction in PAGA penalties, setting the risk-adjusted PAGA penalty value at \$2,000.

6 ***Failure to Reimburse Business Expenses***

7 45. Plaintiff also alleged that he and the Class Members were required to incur
8 expenses (such as purchasing tools and other equipment) to carry out their tasks for Defendant,
9 without reimbursement.

10 46. CMO ¶ G(3)(a)(ii): based on information learned leading up to and at mediation,
11 this claim was limited to only certain Class Members; thus, we calculated the maximum potential
12 value of this claim as \$80,000, based on \$1,000 in expenses incurred by 80 Class Members.

13 47. CMO ¶ G(3)(a)(iii): because this claim applied only to a subset of employees, we
14 were faced with various defenses, including as to numerosity, commonality, typicality, and
15 whether proof of these claims would require unmanageable individualized inquiries.
16 Additionally, Defendants argued that the Class Members were provided all tools needed to do
17 their jobs and, as such, the claim had no merit because Class Members were not required to incur
18 any expenses to do their jobs. When considering these risks and defenses, we placed a 30% risk
19 at the class certification stage and another 30% on the merits, leading to a risk-adjusted value of
20 \$39,200 for the unreimbursed expense claim.

21 48. CMO ¶ G(9)(b): as for the PAGA penalty claims, these violations did not occur to
22 all Class Members or in every pay period, so we calculated the maximum PAGA penalty as
23 \$107,800 based on alleged violations in 10% of pay periods. But this did not factor in the risk
24 and defenses discussed above, and we also assumed that the Court would apply some
25 discretionary reduction, so we assumed a risk-adjusted PAGA value of \$20,000.

26 ***Failure to Timely Pay Wages Each Period***

27 49. This claim is pursued on a PAGA basis (the remedy for a violation is enforceable
28 either through PAGA or the Labor Commissioner); thus, the analysis here focuses on PAGA.

50. CMO ¶ G(9)(b): Plaintiff calculated the maximum potential PAGA penalty at trial as \$1,078,200 for Labor Code § 204 claims (100% violation rate for 10,782 wage statements multiplied by \$100). This claim is based on the allegation that Defendants did not pay all wages and wage premiums (for meal/rest violations) timely each period, which violated Labor Code § 204. However, because these claims were entirely derivative of the claims above, they only had merit if the claims for unpaid wages or meal/rest breaks were successful. And, as such, we had applied a 30% risk on the merits to align with the merits risk of the claims above. Additionally, we assumed that the Court would apply a discretionary reduction of 95% based on Defendants' likely argument (if liability was found) that PAGA penalties for § 204 violations should be greatly reduced because these are "derivative" and they were already liable for damages to the Class and for PAGA penalties for the overarching violations. Thus, the risk-adjusted PAGA penalties under § 204 are \$37,737.

Collective Maximum and Risk-Adjusted Class Damages/Penalties and PAGA Penalties

CMO ¶¶ G(3)(a)(ii)(C), CMO G(3)(a)(iii)(C), and CMO ¶ G(9)(b)(iii and iv)

51. The table below provides the total sums (for all claims) of the maximum and risk-adjusted class damages and penalties and the total maximum and risk-adjusted PAGA penalties.

Claim	Class Values		PAGA Values	
	Maximum	Risk-Adjusted	Maximum	Risk-Adjusted
Unpaid Wages	\$191,305	\$122,435	\$539,100	\$50,000
Meal Periods	\$2,388,695	\$725,289	\$974,693	\$120,000
Rest Breaks	\$1,515,669	\$388,794	\$1,078,200	\$100,000
Wage Statement	\$1,068,200	\$373,870	\$1,078,200	\$100,000
Waiting Time Penalties	\$846,885	\$203,252	\$5,000	\$2,000
Unreimbursed Expenses	\$80,000	\$39,200	\$107,800	\$20,000
Labor Code § 204	n/a	n/a	\$1,078,200	\$20,000
Totals	\$6,090,754	\$1,852,840	\$4,861,193	\$412,000

CMO ¶ G(3)(a)(iv)

52. Based on an assumed Net Settlement Amount of \$242,666.67, and an estimated 315 Class Members, the average payment will be \$770.37. However, the actual amounts payable

1 to the Class will be based on each individual's weeks worked compared to the total Class weeks
2 worked. While we cannot generate an exact "range of recoveries" right now since the Class Data
3 will not be provided to the Settlement Administrator until after Preliminary Approval, I can
4 provide reasonable estimates of the high and low payments as follows.

5 53. Based on our analysis, we estimate that there will be 25,000 weeks worked by the
6 Class and each week worked will receive an estimated net amount of \$9.70 (\$242,666.67 /
7 25,000). Thus, on the low end, a Class Member that worked only 2 weeks during the Class
8 Period will receive \$19.40. And, at the high end, a Class Member that worked for the entire
9 Class Period (*i.e.*, the 273 calendar weeks from October 25, 2018, through January 16, 2024),
10 will receive an estimated high payment of \$2,648 (273 x \$9.70).

11 54. Given that these are only preliminary estimates, the Settlement Administrator will
12 update the average, high, and low payments in the Class Notice (if necessary) after Preliminary
13 Approval and after calculating those figures from the Class Data.

14 CMO ¶ G(3)(a)(v)

15 55. From the data and analysis conducted prior to mediation, derived through both
16 formal and informal discovery, I estimate the following recoveries by the Aggrieved Employees.
17 First, given that we estimate 190 Aggrieved Employees, those individuals will receive an
18 estimated average share of \$39.47 (\$7,500 / 190). Then, based on an estimated 10,782 wage
19 statements during the PAGA Period, we estimated the value of each PAGA Workweek as \$0.70
20 (\$7,500 / 10,782); if an Aggrieved Employee worked only 2 weeks in the PAGA Period, the low
21 payment would be \$1.40 and, if an Aggrieved Employee worked the maximum weeks during the
22 PAGA Period (116), then the maximum PAGA payment will be \$81.20.

23 CMO ¶ G(3)(a)(vi)

24 56. My office conducted substantial informal discovery to investigate the size of the
25 class and strength of the claims. Specifically, in preparation for mediation, we demanded and
26 received informal discovery, including documents and information that allowed us calculate the
27 potential damages and evaluate potential risk, including policies and procedures pertaining to the
28 claims, statistics relating to the number of current and former employees, number of shifts, pay

1 periods worked and other things, and a sampling of payroll and timekeeping records for Class
2 Members, including excel files and over 3,800 pages of documents.

3 CMO ¶ G(3)(a)(vii)

4 57. I am not aware of any other class, representative, or collective action in this or
5 any other court that asserts claims similar to those asserted in this action or behalf of a class or
6 group of individuals, some or all of whom would also be members of this Class. I have also
7 made reasonable inquiry of other members of my firm (we have no associated firms in this
8 instance), and none of the other attorneys are aware of any such similar actions.

9 CMO ¶ G(3)(c)(i)

10 58. The Court, at CMO ¶ G(C)(i), states that it “believes that redistribution of the
11 value of uncashed settlement check(s) to those class members who have cashed their checks will
12 better serve the public interest and the interest of the class than distribution in the manner
13 otherwise prescribed by [CCP § 384(b)]” (*i.e.*, payments to a *cy pres*).

14 59. Here, the Parties are not sending the value of uncashed checks to a *cy pres*.
15 Instead, any uncashed checks will be sent to the California State Controller in the name of the
16 Class Member (or Aggrieved Employee). Thus, those funds are – and always will be – paid to
17 and available for collection by the Class Member (or Aggrieved Employee) at any point in the
18 future. This does not fall under the umbrella of CCP § 384(b), as that section only relates to
19 payment of residue to “nonprofit organizations or foundations to support projects that will
20 benefit the class or similarly situated persons, or that promote the law consistent with the
21 objectives and purposes of the underlying cause of action, to child advocacy programs, or to
22 nonprofit organizations providing civil legal services to the indigent.”

23 60. I do not believe there is a need for the Parties to “explain[] the factual basis for
24 the disagreement” with the Court’s proposed method of redistributing funds, because the Court’s
25 proposal is, by its plain language, only applicable in lieu of a *cy pres* (not where the uncashed
26 funds are still paid to the Class Member, essentially held in trust by the State Controller).

27 61. However, in an abundance of caution and to prevent a delay, I want to explain
28 why we do not want to redistribute uncashed checks to class members that did cash checks.

62. First, the process to carry out the Court's proposed redistribution is not as simple as it sounds. Under the CMO's proposed method, after 180 days have passed, the uncashed funds would be redistributed to Class Members that cashed their checks. That step, on a standalone basis, is not concerning. However, that is nowhere near the end of the process. Indeed, after the second checks are issued, there will be another batch of checks that go uncashed, as there always are in these class actions. What, then, happens to the funds from the uncashed second checks? Are those amounts redistributed again? And to whom? Should the third round of checks only go to those who cashed the first and second checks? Regardless of the answer to these questions, the problem will continue because some of the third checks will likely go uncashed as well, meaning that this process can repeat over and over – each time with a 180-day check cashing period.

63. Second, the Court's proposal to redistribute uncashed checks to class members is also problematic because it will greatly increase the cost of settlement administration. After all, the administrator will have to keep banking and taxing accounts open for a much longer period, possibly for multiple years, and will have to issue multiple tax forms with each new payment. But how much extra will the Administrator charge to be exact? And how many additional checks will be mailed a second and third time? How will this be priced? And once the court has approved a specific amount of money for the Settlement Administrator, who will pay for the increased costs, and who will be responsible for ensuring that the increased costs are fair, reasonable and adequate - because after all, this entire process is occurring after the Court has entered judgment.

CMO ¶ G(3)(d)

64. In accordance with CMO ¶ G(3)(d), we requested bids from four different settlement administrators, which resulted in the following bids: CPT Group (\$11,500), ILYM (\$8,450), Rust Consulting (\$12,327), Xpand (\$8,500) and Phoenix (\$9,000). Although Phoenix was not the lowest bid, the difference is extremely small (only \$500) and the Parties are comfortable with Phoenix and have had Phoenix successfully administer many complex settlements, including approvals in this Court. Thus, the Parties agreed to retain Phoenix based

1 on its all-in (fixed) fee to administer the settlement for \$9,000.

2 CMO ¶ G(9)(b)

3 65. The paragraphs above provide the information requested in CMO ¶ G(9)(b)(i-iv);
4 this section addresses the remaining requests under CMO ¶ G(9)(b)(v-viii).

5 66. CMO ¶ G(9)(b)(v): I'd first like to point out that a finding of "knowing and
6 intentional" is not necessary under claims for PAGA penalties; that is a required element of wage
7 statement violations (on a class, not PAGA, basis) under Labor Code § 226(e). However, with
8 that said, we believe there is an argument that Defendants' unpaid wage claims would not be
9 found "knowing and intentional" (for purposes of Labor Code § 203, for instance). Additionally,
10 we believed that Defendants had a good argument that the derivative wage statement violations
11 were not "knowing and intentional."

12 67. CMO ¶ G(9)(b)(vi): If this action proceeded to trial, Defendants would have
13 argued for a discretionary reduction in PAGA penalties because the assessment of significant
14 PAGA penalties would be "unjust, arbitrary and oppressive, or confiscatory" in light of "the facts
15 and circumstances of [this] case." *See* Labor Code § 2699(h). Defendants' arguments relate to a
16 "mistake of law" fact pattern, and similar cases have applied large reductions in PAGA penalties
17 in such situations. *See, e.g., Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037
18 (97.5% reduction in PAGA penalties "appropriate" based on the "unjust, arbitrary and
19 oppressive, or confiscatory" factors because (i) the employer did not "deliberately evad[e] a clear
20 obligation to provide legally required pay and benefits to employees," (ii) the employer did not
21 "negligently fail to learn about its obligations under the wage and hour laws," and (iii) the
22 employer's obligations were "genuinely unclear" because "there is no straight answer to the
23 question").

24 68. CMO ¶ G(9)(b)(vii): The parties only reached settlement and the agreed-upon
25 PAGA penalties after extensive informal discovery and arms-length negotiation between the
26 parties and through an experienced mediator. Notably, Defendants raised many defenses which,
27 if accepted by the Court, could result in a significant reduction of penalties, or the elimination of
28 penalties altogether through dispositive motions. As such, an assessment of penalties greater

1 than those agreed-upon would be unjust at this stage because this settlement reflects an informed,
2 fundamentally fair, and reasonable settlement of the PAGA claims herein based on the unique
3 facts, defenses, and risks in this case.

4 69. CMO ¶ G(9)(b)(viii): the sections above show that the amount of the agreed-upon
5 penalties is fair.

6 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

7 70. The settlement was the product of extensive arm's length negotiations, facilitated
8 by an experienced mediator. Though cordial and professional, the settlement negotiations were
9 adversarial and non-collusive in nature. The settlement reached is the product of substantial
10 effort by the parties and their counsel. Although we believed that there was a possibility of
11 certifying the claims, we recognized the potential risk, expense, and complexity posed by
12 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
13 on the damages awarded, and/or on an appeal that can take several more years to litigate.

14 71. The settlement will result in a fair payment to each class member based on the
15 number of weeks worked. Plaintiff and my firm have diligently investigated the claims and
16 defenses on behalf of the Class Members and worked to achieve a resolution of the claims to
17 maximize the recovery by avoiding further expenditure of attorneys' fees and costs. After
18 evaluating the significant risks attendant with further litigation described above and weighing
19 them against the benefits of a known compromise and settlement as set forth in the Settlement
20 Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and
21 the Class, and is a fair and reasonable resolution of the claims alleged.

22 72. My firm brought to bear a great deal of experience in negotiating the settlement of
23 this case. As detailed herein, I, along with my senior associate Peter Carlson, engaged in the
24 necessary discovery and investigation, making it possible to exercise informed judgment
25 throughout the settlement process, including significant document review (*e.g.*, documents
26 pertaining to Defendant's policies and procedures, personnel documents, among others), and
27 conducted an extensive analysis of the detailed class-wide data provided by Defendants.
28

1 73. Based on my experience in other cases, including wage and hour matters, I
2 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
3 In this case, the recovery for each class member is reasonable, fair, and adequate, and this
4 settlement is in the best interests of the class. The settlement provides each class member with
5 compensation for the alleged violations when viewed in relation to the costs and risks inherent in
6 obtaining class certification and proceeding to trial.

7 74. My firm, as well as defense counsel, fully endorse the terms and conditions of the
8 settlement as set forth in the abovementioned Settlement Agreement.

9 75. Of course, the settlement amount represents a compromise figure, taking into
10 account the various risks surrounding class certification and the merits of Defendants' asserted
11 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
12 members, with no reversion to Defendants.

13 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
14 **REQUESTED FEES AND COSTS**

15 76. As set forth above, I have handled over 250 class and representative actions, have
16 been appointed as class counsel and have successfully resolved over half of those cases, and
17 many others remain pending and will successfully resolve in the future.

18 77. When this case was taken on a contingency fee basis, with my firm agreeing to
19 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
20 course of this litigation, my firm and my co-counsel paid all costs including filing fees, court
21 costs, research fees, and mediation costs. There was never a guarantee that we would recoup
22 those expenditures.

23 78. It is my experience that attorney fee awards of one-third of a common fund
24 settlement is the standard in California. In this case, my firm agreed to seek one-third of the
25 Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee is
26 further warranted because it is within the range of reasonableness typically awarded in class
27 actions. The litigation costs are reasonably capped at \$25,000 and will be based on the actual
28 amount of costs incurred at the time of final approval.

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80. Plaintiff has concurrently submitted the settlement and all moving papers to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit G**.

EXHIBITS AND CONCLUSION

82. The proposed Class Notice is attached as **Exhibit B**.

83. The proposed Request for Exclusion Form is attached as **Exhibit C**.

84. The proposed Objection Form is attached as **Exhibit D**.

85. The proposed Dispute Form is attached as **Exhibit E**.

86. A true and correct copy of the notice letters we submitted on behalf of Plaintiff to the LWDA is attached as **Exhibit F**.

87. The LWDA's confirmation of receipt of this Motion and Declarations is attached hereto as **Exhibit G**.

88. Counsel has carefully reviewed both the terms and the terminology of the order and the accompanying forms (notice, objection form, exclusion form, dispute form) to confirm

1 that the various documents are internally consistent, consistent with each other, and consistent
2 with the settlement agreement.

3 89. For the foregoing reasons, it is respectfully requested that the Court grant
4 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
5 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
6 payment to the Class Representative.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct. Executed on May 24, 2024, at Riverside, California.

9
10 By: 
11 Brian J. Mankin, Esq.
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EXHIBIT “A”

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Attorneys for Defendants, Nikkiso America, Inc.; ACD, LLC; Cryogenics Industries, Inc.;
Cryogenic Industries Service Companies, LLC; Cryoquip, LLC; Integrated Cryogenics
Solutions, LLC; and Cosmodyne, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

CARLOS FLORES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

NIKKISO AMERICA, INC., a Delaware
Corporation; ACD, LLC, a California Limited
Liability Company; CRYOGENIC
INDUSTRIES, INC., a Delaware
Corporation; CRYOGENIC INDUSTRIES
SERVICE COMPANIES, LLC, a California
Limited Liability Company; CRYOQUIP,
LLC, a California Limited Liability
Company; COSMODYNE, LLC, a California
Limited Liability Company; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CVRI2204626
*[Assigned to Hon. Harold Hopp, Dept 10, for
all purposes]*

**CLASS AND PAGA SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
2 into by and between Plaintiff Carlos Flores, individually and on behalf of all others similarly
3 situated, and on behalf of the State of California, and Defendants Nikkiso America, Inc., ACD,
4 LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC,
5 Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC, and is approved by their respective
6 counsel of record, subject to the terms and conditions hereof and the Court's approval.

7 **A. Definitions**

8 1. "Action" or "Lawsuit" means and refers to the case entitled *Carlos Flores v.*
9 *Nikkiso America, Inc., et al.*, Riverside County Superior Court, Case No. CVRI2204626.

10 2. "ACD" means and refers to Defendant ACD, LLC, which also does business in
11 California as ACD and Nikkiso ACD.

12 3. "ACD Class" means all current and former nonexempt (hourly paid) employees
13 employed by ACD in California during the ACD Class Period.

14 4. "ACD Class Period" is January 1, 2020, through January 16, 2024.

15 5. "Aggrieved Employee(s)" means all current and former nonexempt (hourly paid)
16 employees employed by ACD in California during the PAGA Period.

17 6. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
18 Action and PAGA Settlement Agreement and Release of Claims.

19 7. "Class" is defined all members of the ACD Class and Cryogenic Class.

20 8. "Class Member(s)" refers to individual members of the Class.

21 9. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby, Mankin &
22 Lauby LLP.

23 10. "Class Data" means a complete list that Defendants will diligently and in good
24 faith compile from their records and provide to the Settlement Administrator on one spreadsheet
25 which shall include, for each Class Member: the individual's full name; last known address;
26 Social Security Number; total Weeks Worked during the PAGA Period, total Weeks Worked in
27 the ACD Class during the ACD Class Period and the total Weeks Worked in the Cryogenic Class
28 during the Cryogenic Class Period.

1 11. “Class Representative” or “Plaintiff” means and refers to Plaintiff Carlos Flores.

2 12. “Combined Class Period” is deemed to be any time during the period of October
3 25, 2018 (start of the Cryogenic Class Period) and January 16, 2024 (end of the ACD Class
4 Period).

5 13. “Complaint” refers to the operative second amended complaint, which pleads
6 class action and PAGA representative claims against Defendants.

7 14. “Court” (or “Judge”) means the California Superior Court, County of Riverside.

8 15. “Cryogenic” collectively means and refers to Defendants Nikkiso America, Inc.,
9 ACD, LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC,
10 Cryoquip, LLC, Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC.

11 16. “Cryogenic Class” means current and former nonexempt (hourly paid) employees
12 employed by Defendants Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc.,
13 Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and
14 Integrated Cryogenic Solutions, LLC in California during the Cryogenic Class Period.

15 17. “Cryogenic Class Period” is October 25, 2018, through December 31, 2019.

16 18. “Defendants” means and refers to Defendants Nikkiso America, Inc., ACD, LLC,
17 Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC,
18 Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC.

19 19. “Defendants’ Counsel” or “Defense Counsel” means and refers to Burkhalter
20 Kessler Clement & George.

21 20. “Effective Date” is defined as the latest of the following dates: (i) if no Class
22 Member timely and properly intervenes or files a motion to vacate the Judgment under Code of
23 Civil Procedure § 663, then the date the Court enters an order granting Final Approval of the
24 Class Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then
25 sixty-one (61) calendar days following the date the Court enters an order granting Final
26 Approval, assuming no appeal is filed; or (iii) if a Class Member timely and properly intervenes
27 or files a motion to vacate the Judgment under Code of Civil Procedure § 663 or initiates another
28 collateral attack, and if a timely appeal is filed, then the date of final resolution of that appeal or

1 other collateral attack (including any requests for rehearing and/or petitions for *certiorari*),
2 resulting in final judicial approval of the Class Settlement.

3 21. “Escalator Clause:” Defendants represent that there are approximately 315 Class
4 Members who worked approximately 25,000 Workweeks during the Combined Class Period.
5 Should the total number of Workweeks exceed 27,500 (which is 10% more than Defendants’
6 representation), then the Settlement Amount shall increase by \$18.40 (Settlement Amount
7 divided by 25,000) for each additional Workweek above 27,500.

8 22. “Final Approval” refers to the order of the Court granting final approval of this
9 Settlement Agreement and entering a judgment approving this Agreement on substantially the
10 terms provided herein or as may be modified by subsequent agreement of the Parties.

11 23. “Individual Class Payment” refers to each Participating Class Members share of
12 the Net Settlement Amount, as further discussed in Paragraph 54(c) below.

13 24. “Individual PAGA Payment” refers to each Aggrieved Employees share of the
14 PAGA Penalties, as further discussed in Paragraph 54(h) below.

15 25. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 54(b)
16 below.

17 26. “Notice” means the notice of proposed class settlement that will be sent to the
18 Class Members, and which will advise each Class Member of the settlement and his or her
19 estimated Individual Class Amount, Individual PAGA Payment, Workweeks worked and will
20 further advise of the setting of a Final Approval Hearing.

21 27. “Notice Packet” means the Notice, Request for Exclusion Form, the Objection
22 Form, and the Dispute Form to be sent to all Class Members.

23 28. “Objecting Class Member” means a Class Member, other than Plaintiff, who
24 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 75(c)
25 below.

26 29. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
27 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
28 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well

as the Individual PAGA Payment allocated to each Aggrieved Employee.

30. “PAGA Period” is period from October 25, 2021, through January 16, 2024.

31. “Participating Class Member” means any and all Class Members who are deemed to participate and receive an Individual Class Payment and do not opt-out by submitting timely valid Requests for Exclusion.

32. “Parties” means Plaintiff and Defendants, collectively.

33. “Preliminary Approval Date” means the date the Court approves the Settlement Agreement and enters the Preliminary Approval Order.

34. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice Packet to the Class, an opportunity to opt out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a final approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs. Provided that the motion is consistent with the terms herein, Defendants will not object to Plaintiff’s motion for preliminary approval but will be provided with an opportunity to review and comment upon the motion before it is filed.

35. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and from which the settlement payments shall be made.

36. “Released Class Claims” or “Class Claims” by the Participating Class Members upon Final Approval of the Settlement will include all claims stated in the operative Complaint and those based solely upon the facts in the Complaint, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay final wages, (7) failure to provide accurate itemized wage statements, and (8) unfair and unlawful competition.

37. “Released PAGA Claims” means any and all PAGA claims that Plaintiff alleged against the Released Parties based on the facts stated in the relevant LWDA notice letter and

only to the extent that they are alleged in the operative Complaint, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each period, (7) failure to timely pay wages upon separation of employment, (8) failure to provide accurate itemized wage statements, and (9) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged in the LWDA notice letters and Complaint. The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

38. “Released Parties” means Defendants Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC, together with their officers, directors, employees, and agents.

39. “Release” shall mean the release and discharge of the Released Class Claims by Plaintiff and all Participating Class Members and their assignees.

40. “Response Deadline” is 45 calendar days from the date the Notice is mailed to the Class Members.

41. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 75(a) below.

42. “Settlement Amount” is \$460,000, subject to the Escalator Clause and exclusive of Defendants’ obligation to fund its share of payroll taxes, as further discussed in Paragraph 49(c) below.

43. “Settlement Administrator” means and refers to Phoenix Settlement Administrators, the third-party class action settlement administrator agreed to by the Parties, that will provide the Notice Packet to the Class Members and distribute the settlement amounts as described in this Agreement.

44. “Settlement Administration Costs” means the costs payable from the Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not

1 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and
2 deposit of the employee and employer share of payroll taxes, unclaimed property due diligence,
3 reporting and remittance obligations, distributing the Settlement Amount, and providing
4 necessary reports and declarations, as requested by the Parties. The Settlement Administration
5 Costs shall be paid from the Settlement Amount, and shall not exceed the amount approved by
6 the Court, regardless of any additional costs that the Settlement Administrator may request or
7 feel is necessary to administer the Settlement.

8 45. “Work Weeks” or “Weeks Worked” in the context of a Class Members means any
9 and all work weeks during the Combined Class Period during which the Class Member worked
10 at least one day in the ACD Class and/or Cryogenic Class. Likewise, in the context of
11 Aggrieved Employees, it means any and all weeks worked during the PAGA Period during
12 which the Aggrieved Employee worked at least one day for ACD in California.

13 **B. General Terms**

14 46. On October 24, 2022, Plaintiff Carlos Flores submitted the LWDA Notice Letter
15 by giving written notice by online filing to the Labor and Workforce Development Agency
16 (“LWDA”) and by certified mail to Defendant Nikkiso America of the specific provisions of the
17 Labor Code alleged to have been violated, including the facts and theories to support the alleged
18 violations. On November 22, 2022, Plaintiff submitted an amended notice in order to add all
19 Defendants to the LWDA Notice Letter.

20 47. On October 25, 2022, Plaintiff Carlos Flores filed the instant class action against
21 Defendant Nikkiso America, which he also amended on about November 22, 2022, to add all
22 Defendants to the Action. Then after the 65-day exhaustion period without the LWDA asserting
23 jurisdiction over the PAGA claims, Plaintiff filed the operative second amended Complaint,
24 alleging class and representative action claims, including: (1) failure to pay minimum wages, (2)
25 failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest
26 breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages upon
27 separation of employment, (7) failure to provide accurate itemized wage statements, (8) unfair
28 and unlawful competition, and (9) related PAGA claims. Defendants filed their Answer to the

1 Second Amended Complaint on about March 7, 2023.

2 48. Defendants deny Plaintiff's claims and allegations and contend that the Action is
3 not suitable for class certification.

4 49. The Class Representative believes he can proceed with the representative and
5 class claims, that the Action is meritorious, and that class certification is appropriate.

6 50. The Parties have conducted a thorough investigation into the facts of the Action.
7 This includes an exchange of formal discovery, as well as an extensive exchange of informal
8 discovery, including a sampling of payroll and timekeeping records for Class Members. Class
9 Counsel is both knowledgeable about and has done extensive research with respect to the
10 applicable law and potential defenses to the claims of the Class. Class Counsel has diligently
11 pursued an investigation of the Class Members' claims against Defendants. Based on the
12 foregoing data and on their own independent investigation and evaluation, Class Counsel is of
13 the opinion that the settlement with Defendants for the consideration and on the terms set forth in
14 this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class
15 Members in light of all known facts and circumstances, including the risk of significant delay
16 and uncertainty associated with litigation, various defenses asserted by Defendants, and
17 numerous potential appellate issues.

18 51. On January 16, 2024, the Parties participated in a full-day mediation with Eve
19 Wagner, a highly-respected wage-and-hour mediator. At the conclusion of mediation and
20 extensive arms-length negotiations, the Parties reached a global settlement and entered into a
21 Memorandum of Understanding.

22 52. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
23 to be performed or judgment to be entered pursuant to the terms of the Settlement and
24 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of
25 any statute or law or liability on the claims or allegations in the Action.

26 53. Stipulation for Class Certification. For settlement purposes only, Defendants will
27 stipulate that the Participating Class Members may be conditionally certified as a Class. This
28 stipulation to certification is in no way an admission that class action certification is proper and

1 shall not be admissible in this action except for the sole purposes of enforcing this Agreement.
2 Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to
3 class certification as part of the Settlement shall become null and void ab initio and shall have no
4 bearing on, and shall not be admissible in this Action in connection with, the issue of whether
5 certification would be appropriate in a non-settlement context. Defendants expressly reserve
6 their rights and declare that they would continue to oppose class certification and the substantive
7 merits of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves his
8 rights and declares that he will continue to pursue class certification and a trial should the Court
9 fail to issue Final Approval.

10 **C. Terms of Settlement**

11 54. The financial terms of the Settlement are as follows:

12 (a) Settlement Amount: The Parties agree to settle this Action for the
13 Settlement Amount, which is the maximum amount that will be paid by Defendants (except for
14 the employer's share of payroll taxes), which includes payments to the Participating Class
15 Members, PAGA Penalties (to the Aggrieved Employees and LWDA), Attorneys' Fees and
16 Costs Award, and Settlement Administration Costs. Defendants shall separately pay the
17 employer's share of its payroll tax obligations, which shall be reported through the Settlement
18 Administrator.

19 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
20 Settlement Amount less the Attorneys' Fees and Costs Award, the Settlement Administration
21 Costs, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service
22 Award, or Settlement Administrator Costs, or either increases or decreases the amount allocated
23 to the PAGA Penalties, the difference shall be placed in the Net Settlement Amount and
24 allocated to the Participating Class Members.

25 (c) Individual Class Payments for the Class will be calculated and apportioned
26 from the Net Settlement Amount based on the number of Weeks Worked by a Class Member
27 during the Combined Class Period. Each specific Individual Class Payment will be calculated
28 by: (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all

1 Participating Class Members during the Combined Class Period, and (b) multiplying the result
2 by each Participating Class Members' Weeks Worked. The entire Net Settlement Amount will be
3 disbursed to all Participating Class Members. If there are any valid and timely Requests for
4 Exclusion, the Settlement Administrator shall proportionally increase the Individual Class
5 Payment for each Participating Class Member according to the number of Weeks Worked, so
6 that the amount actually distributed to Participating Class Members equals one hundred percent
7 (100%) of the Net Settlement Amount.

8 (d) Allocation of Individual Class Payments: The Individual Class Payments
9 to Participating Class Members will be allocated as follows: one-third (33.333%) will be
10 allocated as wages subject to withholding of all applicable local, state and federal taxes; and two-
11 thirds (66.667%) will be allocated for interest and statutory penalties (pursuant to, e.g.,
12 California Labor Code sections 203, 210, 226) from which no taxes will be withheld. The
13 Settlement Administrator will issue to each Participating Class Member an Internal Revenue
14 Service Form W-2 and comparable state forms with respect to the wage allocation and a Form
15 1099 with respect to the penalties and interest allocations.

16 (e) Service Payment to Class Representative: Not applicable.

17 (f) Attorneys' Fees and Costs Award: Defendants agree to not oppose a
18 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
19 Settlement Amount, plus reasonable litigation costs not to exceed \$25,000 ("Attorney's Fees and
20 Cost Award"). Defendants agree not to oppose any contention by Class Counsel that attorneys'
21 fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be
22 paid from the Settlement Amount, and, except for this award, Defendants shall have no further
23 obligation to pay any attorneys' fees, costs or expenses to Class Counsel. Should the Court
24 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
25 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court
26 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
27 Settlement Agreement or otherwise void the Settlement. The Settlement Administrator shall
28 issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs

1 awarded by the Court.

2 (g) Settlement Administration Costs: The fees and other charges of the
3 Settlement Administrator will be paid from the Settlement Amount, not to exceed \$9,000, unless
4 (1) the Escalator Clause is triggered (whereby any reasonable increase in Settlement
5 Administration Costs shall be paid from the increased Settlement Amount, subject to Court
6 approval), or (2) as otherwise approved by all Parties and the Court.

7 (h) PAGA Penalties: The Parties agree that \$30,000 is allocated to PAGA
8 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
9 amount, \$22,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
10 Private Attorney General Act of 2004 (“PAGA”) and \$7,500 (25%) will form the Individual
11 PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata
12 on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as
13 required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
14 Settlement.

15 (i) Tax Liability: Class Counsel and Defendants make no representations as
16 to the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and
17 the Class Members are not relying on any statement or representation by Class Counsel or
18 Defendants in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees
19 understand and agree that they will be solely responsible for the payment of any taxes and
20 penalties assessed on their respective Individual Class Payments and Individual PAGA
21 Payments, described herein. Forms 1099 will be distributed in the manner required by the
22 Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code,
23 the regulations promulgated thereunder, or other applicable tax law, is changed after the date of
24 this Agreement, the processes set forth in this Section may be modified in a manner to bring
25 Defendants into compliance with any such changes. Plaintiff, Participating Class Members, and
26 Aggrieved Employees understand and agree that they will be solely responsible for the payment
27 of any taxes and penalties assessed on their respective payments described herein.

1 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
2 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
3 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
4 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
5 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
6 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
7 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
8 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
9 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
10 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
11 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
12 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
13 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
14 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
15 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
16 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
17 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
18 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
19 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
20 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR
21 ADVISOR’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
22 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
23 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
24 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

25 (k) “Non-Reversionary” Settlement. This is a “non-reversionary” settlement.
26 Under no circumstances will any portion of the Settlement Amount revert to Defendants.
27 Participating Class Members and Aggrieved Employees will not have to make a claim to receive
28 an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of

1 Individual Class Payment or Individual PAGA Payments will be made directly to each
2 Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be
3 responsible for accurately and timely reporting and remittance obligations with respect to
4 unclaimed funds as a result of a Participating Class Member and/or Aggrieved Employee not
5 cashing any checks delivered pursuant to the Settlement by the check cashing deadline, as set
6 forth herein.

7 (l) Class Counsel and Plaintiff believe that the Settlement is fair and
8 reasonable and will so represent same to the Court.

9 **D. Release by the Participating Class Members**

10 55. Upon entry of the Final Approval Order and Defendants' funding of the
11 Settlement Amount and all employer payroll taxes owed on the wage portion of the Individual
12 Class Payments, and except as to such rights or claims as may be created by this Agreement,
13 Plaintiff and the Participating Class Members will forever completely release and discharge the
14 Released Parties from the Released Class Claims. In terms of the applicable release periods,
15 Participating Members of the ACD Class shall release the Released Class Claims for the ACD
16 Class Period, and Participating Members of the Cryogenic Class shall release the Released Class
17 Claims for the Cryogenic Class Period.

18 56. Each Participating Class Member will be deemed to have made the foregoing
19 Release as if by manually signing it.

20 57. Class Representative, on behalf of himself and the Class, acknowledges and
21 agrees that the claims for unpaid wages and untimely payment of wages in the Action are
22 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to
23 them. Class Representative, on behalf of himself and the Class, acknowledges and agrees that
24 California Labor Code Section 206.5 is not applicable to the Parties or Settlement. Labor Code §
25 206.5 provides in pertinent part as follows: "An employer shall not require the execution of any
26 release of any claim or right on account of wages due, or to become due, or made as an advance
27 on wages to be earned, unless payment of those wages has been made."

28 ///

1 **E. Release of PAGA Claims**

2 58. Upon entry of the Final Approval Order and Defendants' funding of the
3 Settlement Amount and all employer payroll taxes owed on the wage portion of the Individual
4 Class Payments, Plaintiff – in his individual capacity and on behalf of the State of California and
5 LWDA – shall completely release and discharge the Released Parties from the Released PAGA
6 Claims for the PAGA Period.

7 59. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any
8 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
9 releasing the Released PAGA Claims.

10 60. It is the intent of the Parties that the Final Approval Order shall have full
11 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

12 **F. Release by Plaintiff and Class Representative**

13 61. Upon entry of the Final Approval Order and Defendants' funding of the
14 Settlement Amount, and all employer payroll taxes owed on the wage portion of the Individual
15 Class Payments, Class Representative does hereby, for himself and his spouses, heirs,
16 successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,
17 guardians, personal representatives, and assigns forever and completely release and discharge the
18 Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
19 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
20 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
21 damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever,
22 from the beginning of time through the execution of this Stipulation, whether known or
23 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
24 upon, or relating to Class Representative's employment with Defendants or the remuneration for
25 or termination of such employment (the "Class Representative's Claims").

26 62. Without limiting the generality of the foregoing, this general release by Plaintiff
27 includes all federal, state and local statutory claims, federal and state common law claims
28 (including but not limited to those for contract, tort and equity), including without limitation any

1 claims for breach of any implied or express contract or covenant; claims for promissory estoppel;
2 claims of entitlement to any pay; claims of wrongful denial of insurance and employee benefits
3 (except workers' compensation benefits); claims for failure to hire, public policy violations,
4 defamation, invasion of privacy, fraud, misrepresentation, emotional distress, assault/battery, or
5 other common law or tort matters; claims of harassment, retaliation or discrimination based on
6 age, race, color, religion, sex, national origin, ancestry, physical or mental disability, protected
7 activity, medical condition, marital status, sexual preference, union activity, or veteran status;
8 claims under the Americans with Disabilities Act, Age Discrimination in Employment Act, Title
9 VII of the Civil Rights Act of 1964 (as amended), the Civil Rights Act of 1991; 42 USC sec.
10 1981, 42 USC sec. 1983, the Older Workers Benefit Protection Act, the Family and Medical
11 Leave Act; claims for unfair competition; claims based on legal restrictions on Defendants' right
12 to terminate, not to hire or promote employees, or to change an employee's compensation; and
13 claims based on any federal, state or other governmental statute, regulation or ordinance, all
14 statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs or
15 expenses, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation
16 costs, restitution, or equitable relief, or any other claims arising under the Fair Labor Standards
17 Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the
18 California Fair Employment and Housing Act, the California Unfair Competition Act (California
19 Business and Professions Code section 17200 et seq.), the California Labor Code, or Industrial
20 Welfare Commission Wage Orders, or arising out of or based upon the following categories of
21 allegations regardless of the forum in which they may be brought, to the fullest extent such
22 claims are releasable by law: (i) all claims for unpaid overtime; (ii) all claims for unpaid wages;
23 (iii) all claims for meal break violations; (iv) all claims for rest period violations; (v) all claims
24 for paid sick leave violations; (vi) all claims for the failure to timely pay wages upon
25 termination; (vii) all claims for the failure to timely pay wages during employment; (viii) all
26 claims for wage statement violations; (ix) all claims for reporting time pay; and (x) all other
27 penalties recoverable for such claims under PAGA.

1 63. Plaintiff agrees that there is a risk that any injury that he may have suffered by
2 reason of the Released Parties' relationship with him might not now be known, and there is a
3 further risk that said injuries, whether known or unknown at the date of this Settlement
4 Agreement, might possibly become progressively worse, and that as a result thereof further
5 damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and
6 discharge the Released Parties, and understands that by the execution of this Settlement
7 Agreement no further claims for any such injuries that existed at the time of the execution of this
8 Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time
9 period from the beginning of time to the execution of this Settlement Agreement.

10 64. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
11 Section 1542 of the Civil Code of the State of California and does so understanding and
12 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
13 of the State of California states:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
15 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
16 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
17 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
18 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
19 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
20 OR RELEASED PARTY.

21 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
22 full and complete release and discharge of all parties, Class Representative expressly
23 acknowledges that this Settlement Agreement is intended to include in its effect, without
24 limitation, all claims that Class Representative knew of, as well as all claims that he does not
25 know or suspect to exist in his favor against the Released Parties, or any of them, for the time
26 period from the beginning of time to the execution of this Settlement Agreement, and that this
27 Settlement Agreement contemplates the extinguishment of any such Class Representative's
28 claims. Notwithstanding the above, the general release by Class Representative shall not extend
to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
that may not be released by law.

1 **G. Interim Stay of Proceedings**

2 65. Pending completion of all prerequisites necessary to effectuate this Settlement,
3 the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such
4 as are necessary to effectuate the Settlement.

5 **H. Notice Process**

6 66. Appointment of Settlement Administrator. The Parties have agreed to the
7 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
8 including mailing the Notice Packet, using standard devices to obtain forwarding addresses,
9 independently reviewing and verifying documentation associated with any claims or opt-out
10 requests, resolving any disputes regarding the calculation or application of the formula for
11 determining the Individual Class Payments and Individual PAGA Payments, drafting and
12 mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing
13 all necessary tax forms, and performing such other tasks as set forth herein or as the Parties
14 mutually agree or that the Court orders.

15 67. Disputes Regarding Settlement Administration. Any and all disputes relating to
16 administration of the Settlement by the Settlement Administrator (except for disputes regarding
17 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
18 over the terms and conditions of this Agreement, until Plaintiff and Defendants notify the Court
19 that all payments and obligations contemplated by this Agreement have been fully carried out.
20 Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to
21 resolve the dispute without the necessity of Court intervention. The Settlement Administrator
22 shall also be responsible for issuing to Plaintiff, Participating Class Members, and Aggrieved
23 Employees, and Class Counsel any Tax Forms as may be required by law for all amounts paid
24 pursuant to this Agreement.

25 68. Class Data. Within fourteen (14) days after entry of the Preliminary Approval
26 Order, Defendants shall provide the Class Data to the Settlement Administrator. The Settlement
27 Administrator will run a check of the Class Members' addresses against those on file with the
28 U.S. Postal Service's National Change of Address List. The Class Data provided to the

1 Settlement Administrator will remain confidential and will not be used or disclosed to anyone,
2 except as required by applicable tax authorities, pursuant to Defendants' express written consent,
3 or by order of the Court. Although Class Counsel will not be provided with the list of Class Data,
4 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
5 the Action and Settlement.

6 69. Total Workweeks. At least 5 days prior to mailing the Notice Packet, the
7 Settlement Administrator shall provide a spreadsheet to Class Counsel and Defense Counsel
8 containing a preliminary calculation of all payments to be paid from the Settlement Amount,
9 including the estimated Individual Class Payments to each Class Member and Individual PAGA
10 Payments to each Aggrieved Employee (a person's name shall be redacted and a control number
11 used in place of the name). In the event that the total Workweeks worked by all Class Members
12 triggers the Escalator Clause, the Settlement Administrator shall notify the Parties of the
13 increased Settlement Amount, and related increased payments from the Settlement Amount,
14 including increased Attorneys' Fees and Costs and any increased Settlement Administration
15 Costs, all of which shall be subject to Court approval.

16 70. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the
17 Settlement Administrator to the Class Members, by first class mail, in English and Spanish,
18 within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data.
19 For all Class Members, the Notice Packet will include the Notice, a Request for Exclusion Form,
20 an Objection Form, and a Dispute Form. The Settlement Administrator shall use standard
21 devices, including a skip trace, to obtain forwarding addresses of Class Members if any
22 envelopes are returned.

23 71. Returned Notice Packets. The Settlement Administrator will take steps to ensure
24 that the Notice Packet is received by all Class Members, including utilization of the National
25 Change of Address Database maintained by the United States Postal Service to review the
26 accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class
27 Member for whom an updated address is located within ten (10) calendar days following both
28 the Settlement Administrator learning of the failed mailing and its receipt of the updated address.

1 The Notice Packet shall be identical to the original Notice Packet, except that it shall notify the
2 Class Member that the exclusion (opt-out) request or objection must be returned by the later of
3 the Response Deadline or fifteen (15) days after the remailing of the Notice Packet.

4 72. Presumption Regarding Receipt of Notice Packet. It will be conclusively
5 presumed that if an envelope has not been returned to Settlement Administrator by the Response
6 Deadline that the Class Member received the Notice Packet.

7 73. Disputes Regarding Class Data. Class Members are deemed to participate in the
8 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
9 PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class
10 Payment and Individual PAGA Payment, as well as the number of Weeks Worked during the
11 Class Period and the PAGA Period. Class Members may dispute their Weeks Worked by timely
12 submitting evidence to the Settlement Administrator. Defendants' records will be presumed
13 determinative absent reliable evidence to rebut Defendants' records, but the Settlement
14 Administrator will evaluate the evidence submitted by the Class Member and provide the
15 evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good
16 faith about the evidence to determine the Class Member's actual number of Work Weeks, and
17 estimated Individual Class and PAGA Payments. If Class Counsel and Defense Counsel are
18 unable to agree, they agree to submit the dispute to the Court to render a final decision. Class
19 Members and Aggrieved Employees will have until the Response Deadline to dispute Weeks
20 Worked, object or opt out, unless extended by the Court.

21 74. Declaration of Due Diligence. The Settlement Administrator shall provide
22 counsel for the Parties, at least five (5) days after the initial Response Deadline, a declaration of
23 due diligence and proof of mailing with regard to the mailing of the Notice Packet.

24 75. Class Members' Rights. Each Class Member will be fully advised of the
25 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
26 from the Class Claims portion of the Settlement. The Notice Packet will inform the Class
27 Members of the Court-established deadlines for filing objections or requesting exclusion from
28 the Settlement in accordance with the following guidelines:

1 (a) Requests for Exclusion from Class. Any Class Member, other than
2 Plaintiff, may request to be excluded from the Class by completing the Request for Exclusion
3 Form provided within the Notice Packet. The Request for Exclusion Form must be mailed to the
4 Settlement Administrator and postmarked on or before the Response Deadline in order to be
5 timely, unless the Parties otherwise agree in writing. Any such Request must be made in
6 accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall
7 attach each Request for Exclusion to its declaration of due diligence and file with the Court prior
8 to the Final Approval Hearing. Any Class Member who timely requests exclusion in compliance
9 with these requirements: (i) will not have any rights under this Agreement, including the right to
10 object, appeal or comment on the Settlement; (ii) will not be entitled to receive any payments
11 under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any
12 Class Member who is an Aggrieved Employee who requests timely exclusion will still be subject
13 to the Released PAGA Claims to the fullest extent permitted by law and receive an Individual
14 PAGA Payment. All Parties and their counsel, including Defendants and their agents and
15 employees, shall not encourage or solicit opt-outs or objections, directly or indirectly, through
16 any means.

17 (b) Binding Effect on Participating Class Members. All Participating Class
18 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
19 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
20 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
21 Settlement.

22 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
23 does not submit a valid and timely Request for Exclusion may object to the terms of this
24 Agreement by completing the Objection Form provided within the Notice Packet. Any Class
25 Member that intends to object must mail the Objection Form to the Settlement Administrator.
26 The Objection Form must be postmarked on or before the Response Deadline in order to be
27 timely, unless the Parties otherwise agree in writing. Additionally, any objection must be made
28 in accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall

1 provide any objections to Class Counsel and Defense Counsel within three (3) days of receipt,
2 and the Settlement Administrator shall attach the same to its declaration of due diligence and file
3 with the Court prior to the Final Approval Hearing. Any Participating Class Member who files
4 an objection remains eligible to receive monetary compensation from the Settlement. Plaintiff
5 and Defendants shall not be responsible for any fees, costs, or expenses incurred by any Class
6 Member and/or his or her counsel related to any objections to the Settlement. Submitting an
7 objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is
8 preserved by becoming a party of record by timely and properly intervening or filing a motion to
9 vacate the judgment under Code of Civil Procedure § 663.

10 (d) Failure to Object. Any Class Member who does not timely and properly
11 become a party of record by intervening or filing a motion to vacate the judgment waives any
12 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
13 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
14 under California Code of Civil Procedure § 473, and extraordinary writs.

15 (e) Responses to Objections. Counsel for the Parties may file a response to
16 any objections submitted by Objecting Class Members at least five (5) court days before the date
17 of the Final Approval Hearing.

18 (f) Class Members will have until the Response Deadline to object or submit
19 a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
20 Administrator shall disclose jointly to Class Counsel and Defense Counsel what objections or
21 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
22 Counsel or Defense Counsel.

23 76. Funding of the Settlement Amount. Defendants shall jointly and severally deposit
24 the Settlement Amount, plus Defendants' share of payroll taxes, with the Settlement
25 Administrator within fifteen (15) days after the Effective Date.

26 77. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
27 Settlement Amount by Defendants, the Settlement Administrator shall mail the Individual Class
28 Payments to the Participating Class Members, the Individual PAGA Payments to the Aggrieved

1 Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, the payment
2 to the LWDA for PAGA Penalties, and will pay itself the Settlement Administration Costs.
3 Disbursement of the Class Counsel's Attorney's Fees and Cost, Service Payment to the Class
4 Representative, Settlement Administration Costs shall not precede disbursement of the
5 Individual Class Payments and the PAGA Penalties.

6 78. Deadline for Cashing Settlement Checks. Participating Class Members and
7 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
8 Administrator to cash their settlement checks. The release will be binding upon all Participating
9 Class Members who do not cash their checks within the 180-day period. In the event that any
10 settlement check is returned to the Settlement Administrator within 180 days of mailing, the
11 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
12 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
13 Counsel of the results. If a new address is located by these means, the Administrator will have
14 ten (10) business days to re-issue the check. Neither Defendants, Defense Counsel, Class
15 Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen
16 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
17 settlement checks. Without limiting the foregoing, in the event a Participating Class Member
18 and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
19 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
20 payment on such check. If the check in question has not been negotiated prior to the stop
21 payment order, the Settlement Administrator will issue a replacement check.

22 a. If any Participating Class Member's check is not cashed within the time
23 periods noted above, the check will be void and a stop-payment will be issued, and the
24 Settlement Administrator shall issue the unclaimed funds to the California State Controller's
25 Office in the name of the Class Member.

26 b. If any Aggrieved Employee's check is not cashed within the time periods
27 noted above, the check will be void and a stop-payment will be issued, and the Settlement
28 Administrator shall issue the unclaimed funds to the California State Controller's Office in the

name of the Aggrieved Employee.

I. Duties of the Parties Prior to the Court's Approval

79. Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing on fees, costs and the Service Payments;

(b) Approving as to form and content the proposed Notice Packet;

(c) Directing the mailing of the Notice Packet by first class mail to the Class Members;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class for purposes of this Settlement.

Further, pursuant to Labor Code section 2699(l)(2), Plaintiff shall submit a copy of this Agreement and the Motion for Preliminary Approval to the LWDA, no later than the same day Plaintiff files the Motion for Preliminary Approval with the Court.

J. Duties of the Parties Following Court's Final Approval

80. In connection with the Final Approval Hearing provided for in this Agreement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving settlement.

K. Voiding the Agreement

81. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Agreement which effects a fundamental change of the Settlement, the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the

option of either Party.

82. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will have no further obligations under the Settlement, including any obligation by Defendants to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

83. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise specified in this Agreement.

L. Other Terms

84. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

85. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

86. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement, and the final entry of judgment.

87. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Agreement.

88. No Admission. Defendants deny any and all liability to Plaintiff and/or any Class Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were

1 asserted or that might have been asserted in this Action. Nonetheless, Defendants wish to settle
2 and compromise the matters at issue in the Complaint to avoid further substantial expense and
3 the inconvenience and distraction of protracted and burdensome litigation. Defendants have
4 taken into account the uncertainty and risks inherent in litigation, and without conceding any
5 infirmity in the defenses that they have asserted or could assert against Plaintiff, have determined
6 that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the
7 terms and conditions set forth in this Agreement.

8 89. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
9 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
10 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
11 Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this
12 Agreement with the intention of avoiding further disputes and litigation with the attendant
13 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
14 related documents such as the notices, and motions for preliminary and final approval, shall,
15 pursuant to California Evidence Code § 1152 and/or Federal Rule of Evidence 408, be
16 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
17 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
18 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
19 approved, the stipulation will be of no force or effect.

20 90. No Publicity. The Parties will not publicize the Settlement or disclose it to third
21 parties prior to the Court granting Preliminary Approval, except as required or necessary to
22 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
23 Class Representatives agree that they will not discuss the Settlement with the media, any
24 settlement and verdict reporting service, any social media postings or other Internet postings.
25 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
26 other case materials in the Action related to seeking and obtaining Court approval of this
27 Settlement and the related awards of attorneys' fees and costs, or to communications with Class
28 Members or their representatives about this Settlement, including through the posting of Court-

1 filed documents on Class Counsel's websites for access solely by the Class Members, or to
2 prevent the Parties or their representatives from communicating with financial or legal advisors
3 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
4 the Action has been settled on terms mutually agreeable to the Parties.

5 91. Notices. Unless otherwise specifically provided herein, all notices, demands or
6 other communications given hereunder shall be in writing and shall be deemed to have been duly
7 given as of the third business day after mailing by United States registered or certified mail,
8 return receipt requested, addressed:

9 *To the Class:*

10 Brian J. Mankin
11 *brian@lmlfirm.com*
12 Lauby, Mankin & Lauby LLP
13 5198 Arlington Ave, PMB 513
14 Riverside, CA 92504
15 Tel: (951) 320-1444 | Fax: (951) 320-1445

16 *To Defendant:*

17 Daniel J. Kessler
18 *dkessler@bkcglaw.com*
19 Ros M. Lockwood
20 *rlockwood@bkcglaw.com*
21 BURKHALTER KESSLER CLEMENT & GEORGE LLP
22 2020 Main Street, Suite 600
23 Irvine, California 92614
24 Tel: (949) 975-7500 | Fax: (949) 975-7501

25 92. Construction. The Parties hereto agree that the terms and conditions of this
26 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
27 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
28 to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff
and Defendants expressly waive the common-law and statutory rule of construction that
ambiguities should be construed against the drafter of an agreement and further agree, covenant,
and represent that the language in all parts of this Agreement shall be in all cases construed as a
whole, according to its fair meaning.

1 93. Captions and Interpretations. Paragraph titles or captions contained herein are
2 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
3 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
4 contractual and not merely a recital.

5 94. Modification. This Agreement may not be changed, altered, or modified, except
6 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
7 Agreement may not be discharged except by performance in accordance with its terms or by a
8 writing signed by all of the Parties hereto.

9 95. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
10 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
11 provide written notice to the other Party and allow an opportunity to cure the alleged
12 deficiencies, and Plaintiff and Defendants may agree to seek the help of the Mediator to resolve
13 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
14 own attorneys' fees and costs. This provision shall not apply to any legal action or other
15 proceeding instituted by any person or entity other than Plaintiff or Defendant.

16 96. Choice of Law. This Settlement Agreement shall be governed by and construed,
17 enforced and administered in accordance with the laws of the State of California, without regard
18 to its conflicts-of-law rules.

19 97. Integration Clause. This Settlement Agreement contains the entire agreement
20 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
21 or contemporaneous agreements, understandings, representations, and statements, whether oral
22 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
23 hereunder may be waived except in writing.

24 98. Binding On Assigns. This Agreement shall be binding upon and inure to the
25 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
26 successors and assigns.

27 99. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
28 because the members of the Class are numerous, it is impossible or impractical to have each

Class Member execute this Agreement. The Notice Packet will advise all Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Agreement were executed by each Class Member.

100. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: May 23, 2024

PLAINTIFF AND CLASS REPRESENTATIVE,

carlos flores
carlos flores (May 23, 2024 21:34 PDT)

Carlos Flores

Dated: _____

DEFENDANT NIKKISO AMERICA, INC.

By: _____
Title: _____

Dated: _____

DEFENDANT ACD, LLC

By: _____
Title: _____

Dated: _____

DEFENDANT CRYOGENIC INDUSTRIES, INC.

By: _____
Title: _____

1 Dated: _____

**DEFENDANT CRYOGENIC INDUSTRIES SERVICE
COMPANIES, LLC**

By: _____
Title: _____

7 Dated: _____

DEFENDANT CRYOQUIP, LLC

By: _____
Title: _____

12 Dated: _____

DEFENDANT COSMODYNE, LLC

By: _____
Title: _____

18 Dated: _____

**DEFENDANT INTEGRATED CRYOGENIC
SOLUTIONS, LLC**

By: _____
Title: _____

24 ///

25 ///

26 ///

27 ///

28 ///

APPROVED AS TO FORM:

Dated: May 24, 2024

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP



Brian J. Mankin
Attorneys for Plaintiff

Dated: _____

DEFENSE COUNSEL:
BURKHALTER KESSLER CLEMENT & GEORGE LLP

Daniel J. Kessler
Attorneys for Defendants

EXHIBIT “B”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Flores v. Cryogenic, ACD, Nikkiso America, and others
(Riverside Superior Court, Case No. CVRI2204626)

***The Riverside Superior Court authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (the “Action”) filed by Plaintiff Carlos Flores (“Plaintiff” or “Class Representative”) against Defendants Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC (collectively, “Defendants”) for alleged violations of the California Labor Code. (As used in this Notice, Plaintiff and Defendants shall collectively be referred to as the “Parties”).

The Action was filed by Plaintiff and seeks payment of unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of two distinct groups of Defendants’ employees in California:

(1) The “Cryogenic Class” which is defined as all current and former nonexempt (hourly paid) employees employed by Defendants Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC in California from October 25, 2018, through December 31, 2019 (the “Cryogenic Class Period”).

(2) The “ACD Class” which is defined as all current and former nonexempt (hourly paid) employees employed by Defendant ACD, LLC, in California from January 1, 2020, through January 16, 2024 (the “ACD Class Period”).

Additionally, Plaintiff’s Action seeks payment of penalties under the California Private Attorneys General Act (“PAGA”) for all current and former nonexempt (hourly paid) employees employed by Defendant ACD, LLC, in California from the “PAGA Period” of October 25, 2021, through January 16, 2024 (the “Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendants’ records, and the Parties’ current assumptions, your Individual Class and PAGA Payments are shown in the charts below, along with the applicable data points from which these estimates are derived.

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

Two Parts	Weeks Worked	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Please note that the actual amount you receive may be different from the above and will depend on several factors. (If no amount is stated for your Individual PAGA Payment then, according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.) Also, while the range of recovery will differ for Class Members, it is estimated that the average payment will be \$**XX**, the high payment will be \$**XX**, and the low payment will be \$**XX**. If you believe that you worked more weeks during the periods discussed above, you can submit a challenge by **DATE**, 2024 (“Response Deadline”). See **Section 4** of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not

yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may "opt-out" of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion Form by [REDACTED], 2024 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection Form stating why you object to the settlement by [REDACTED], 2024 (see Section 7 for more details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit the enclosed Dispute Form with any supporting evidence to the XX (the "Settlement Administrator"), a third party that is responsible for sending this Notice) (see Section 4 for more details on how to submit a Dispute Form). Defendants' records will be presumed correct, but you may provide evidence to the Settlement Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT'S NOT REQUIRED	
DATE: DATE , 2024 TIME: 8:30 A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failing to pay minimum and overtime wages, failure to provide meal and rest breaks and pay meal and rest period premiums, failure to reimburse business expenses, failure to timely pay wages each period and upon separation of employment, and failure to provide accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act ("PAGA").

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

Both Parties are represented by attorneys in the Action. See **Section 9** below for their contact information.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”), Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay \$460,000 as the “Settlement Amount.” Defendant has agreed to pay a total Settlement Amount of \$460,000, and will deposit the Settlement Amount into an account controlled by Settlement Administrator. The Settlement Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Settlement Amount approximately 15 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to one-third of the Settlement Amount (\$153,333.33) to Class Counsel for attorneys’ fees and up to \$25,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. **\$9,000** to the Settlement Administrator for services administering the Settlement.

C. Up to \$30,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of Weeks Worked during the PAGA Period.

D. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the remainder (the “Net Settlement Amount”) by making Individual Class Payments to Participating Class Members based on their pro rata share of total Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of one-third of each Individual Class Payment to taxable wages (“Wage Portion”) and two-thirds to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendant.

8. Settlement Administrator. The Court has appointed a neutral company, **XX** (the “Settlement Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Settlement Administrator will also decide any Disputes over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Settlement Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the facts alleged in the Action for the duration of the Cryogenic Class Period, the ACD Class Period, and the PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective representatives, agents, heirs, and assigns, release the Released Parties (which includes Defendants and their officers, directors, employees and agents) from all claims stated in the operative Complaint and those based solely upon the facts in the Complaint, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay final wages, (7) failure to provide accurate itemized wage statements, and (8) unfair and unlawful competition (the “Released Class Claims”). The operative release period for the Cryogenic Class is October 25, 2018, through December 31, 2019. The operative release period for the ACD Class is January 1, 2020, through January 16, 2024. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the periods discussed above.

10. Release of Released PAGA Claims. After the Court's judgment is final, and Defendants have paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiff on behalf of himself, the State of California and the LWDA shall release the Released Parties from all PAGA claims that Plaintiff alleged against the Released Parties based on the facts stated in the relevant LWDA notice letter and only to the extent that they are alleged in the operative Complaint, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each period, (7) failure to timely pay wages upon separation of employment, (8) failure to provide accurate itemized wage statements, and (9) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged in the LWDA notice letters and Complaint. The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Cryogenic Class Period and ACD Class Period (the "Combined Class Period"), and (b) multiplying the result by the number of Weeks Worked by each individual Participating Class Member during the Combined Class Period.

2. Individual PAGA Payments. The Settlement Administrator will calculate Individual PAGA Payments by (a) dividing \$7,500 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked and/or Share Points. The number of weeks you worked during the Combined Class Period and PAGA Period, as recorded in Defendants' records, are stated in the tables on page 2 of this Notice. You have until **DATE** ("Response Deadline") to dispute the number of Workweeks credited to you by mailing the enclosed Dispute Form to the Settlement Administrator on or before **[INSERT DATE 45 Days After Mailing]**. Section 9 of this Notice has the Administrator's contact information.

You need to support your dispute by sending copies of pay stubs or other records. The Settlement Administrator will accept Defendants' calculation of weeks worked based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Settlement Administrator will resolve challenges based on your submission and on input from Class Counsel and Defendants' Counsel. The Settlement Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Settlement Administrator will send, by U.S. mail, a single check to every Participating Class Member (which includes every Class Member who doesn't opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Settlement Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, notify the Settlement Administrator as soon as possible. Section 9 of this Notice has the Settlement Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. To opt-out, you must complete, sign, and mail the accompanying Request for Exclusion Form to the Settlement Administrator, postmarked on or before the Response Deadline (as a reminder, **the "Response Deadline" is DATE, 2024**). Any person who submits a timely Request for Exclusion from the Class Claims

(1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Claims remain eligible to receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, on the enclosed Objection Form and include any and all evidence and supporting papers. The Objection Form and any accompanying evidence and papers must be sent to the Settlement Administrator at the address listed in Section 9 on the Objection Form, **postmarked** on or before the Response Deadline. If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

8. WHEN IS THE FINAL APPROVAL HEARING?

On **DATE**, 2024, the Court will hold a public hearing in Department 1 of the Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel's applications for attorneys' fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff's request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the enclosed Request for Exclusion Form, Dispute Form, or Objection Form, or the Settlement itself, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Administrator for more information or to request that a copy of this Notice and request for Exclusion, Objection, and Dispute Forms be sent to you in the mail. If you wish to communicate directly with Class or Defense Counsel, you may contact them at the information below. You may also seek advice and guidance from your own private attorney at your own expense if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on DATE, 2024 and available to be inspected at any time during regular business hours at the Clerk's Office, Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501. You may also review the pleadings, records, and other papers on file in this lawsuit at the Clerk's Office or online at <https://epublic-access.riverside.courts.ca.gov/public-portal/>. To access the case file, click on "Case Number Search," then create a free online account, then type in the case number (CVRI2204626) where requested, and click "Search." You may also email Class Counsel and request a copy of the Settlement Agreement.

DO NOT TELEPHONE THE COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

The contact information for Class Counsel and the Settlement Administrator are below:

Class Counsel	Settlement Administrator
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Peter Carlson, Esq. <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444	Name Mailing Address Telephone Number

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Settlement Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Settlement Administrator if you move or otherwise change your mailing address.

EXHIBIT “C”

REQUEST FOR EXCLUSION FORM

Flores v. Cryogenic, ACD, Nikkiso America, and others
(Riverside Superior Court, Case No. CVRI2204626)

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU WANT TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT CHECK? (check the box that applies)

☐

YES: STOP HERE -- DO NOT RETURN THIS FORM. NO FURTHER ACTION IS NEEDED TO PARTICIPATE IN THE SETTLEMENT.

☐

NO: SIGN, DATE AND RETURN THIS FORM TO EXCLUDE YOURSELF FROM THE SETTLEMENT.

By signing below, I am excluding myself from the Settlement:

I do NOT want to participate in the settlement in *Flores v. Nikkiso America, Inc.* (Riverside Superior Court Case No. CVRI2204626). I understand by excluding myself from the settlement that I will not receive any money from the settlement other than an Individual PAGA Payment if I qualify as an Aggrieved Employee (see first page of the Court Approved Notice of Class Action Settlement).

Signed on _____, 2024

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

Settlement Administrator:

Name

Mailing Address

Telephone Number

EXHIBIT “D”

OBJECTION FORM

Flores v. Cryogenic, ACD, Nikkiso America, and others
(Riverside Superior Court, Case No. CVRI2204626)

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU OBJECT TO THE SETTLEMENT? (check the box that applies)

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM

☐

YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. Any objection should describe the nature of and basis for the objection, and any other information that you would like the Court to consider.

I OBJECT to the Settlement in the case of *Flores v. Nikkiso America, Inc.* on the following grounds (if additional space is necessary, please include additional sheets of paper):

Signed on _____, 2024

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT OBJECTION DEADLINE]:

Settlement Administrator:

Name
Mailing Address
Telephone Number

EXHIBIT “E”

DISPUTE FORM

Flores v. Cryogenic, ACD, Nikkiso America, and others
(Riverside Superior Court, Case No. CVRI2204626)

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

The following charts are based on the records of Defendants Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC, ("Defendants") and reflect:

- (1) The number of weeks that you worked for Defendants in California from October 25, 2018, through December 31, 2019. In other words, this data point provides the number of weeks with which you are credited as working as a "Cryogenic Class" member (as that term is defined in the Notice which was sent to you at the same time as this form).
- (2) The number of weeks that you worked for Defendant ACD, LLC, in California from January 1, 2020, through January 16, 2024. In other words, this data point provides the number of weeks with which you are credited as working as an "ACD Class" member (as that term is defined in the Notice which was sent to you at the same time as this form).
- (3) The number of weeks that you worked for Defendant ACD, LLC, in California from October 25, 2021, through January 16, 2024. In other words, this data point provides the number of weeks with which you are credited as working as an "Aggrieved Employee" (as that term is defined in the Notice which was sent to you at the same time as this form).

<i>Data Points for Calculations of Individual Class Payment</i>	
Weeks Worked as Cryogenic Class member from 10/25/2018 to 12/31/2019	INSERT
Weeks Worked as ACD Class member from 1/1/2020 to 1/16/2024	INSERT

<i>Data Points for Calculations of Individual PAGA Payment</i>	
Weeks Worked as "Aggrieved Employee" from 10/25/2021 to 1/16/2024	INSERT

DO YOU DISAGREE WITH THE INFORMATION ABOVE AND WANT THE PARTIES AND ADMINISTRATOR TO INVESTIGATE FURTHER?

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM.

☐

YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM.

Please state why you believe that you should be credited with more Weeks Worked than shown in the chart and attach copies (not originals) of supporting documentation. The Parties and Settlement Administrator will consider your challenge and make a determination as to these issues.

Signed on _____, 2024

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

Settlement Administrator:

Name
Mailing Address
Telephone Number

EXHIBIT “F”



LAUBY, MANKIN & LAUBY LLP

October 24, 2022

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Nikkiso America, Inc.
27710 Jefferson Avenue, Suite 310
Temecula, CA 92590

**Re: PAGA Civil Penalty Claim
*Carlos Flores v. Nikkiso America, Inc.***

To the Labor and Workforce Development Agency and Nikkiso America, Inc.:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Carlos Flores (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer, Nikkiso America, Inc., and any affiliated entities (collectively, the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately 2019 through May 2022. Claimant alleges that he and all other employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to which Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Also, at all relevant times, Claimant alleges that she and the Aggrieved Employees were compensated on an hourly basis plus additional earned compensation in the form of nondiscretionary bonuses and other similar payments. However, on the occasions when the Aggrieved Employees worked overtime hours and received additional earned compensation during the same workweek, the Company failed to properly include these amounts in the calculations for Claimant’s regular rate of pay – in violation of California law and which led to the failure to pay proper overtime.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the

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Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks. Furthermore, on occasions when Claimant worked 10 hours or more in a shift, the Company failed to authorize and/or permit the mandated additional rest breaks.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, vacation wages, meal and rest break premiums, and the Company further failed to pay the Aggrieved Employees for mandated sick time at a rate “calculated in the same manner as the regular rate of pay.”

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, needing to acquire and/or provide their own tools to perform their tasks for the Company. Finally, during employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that she worked under the joint direction and control of the entities listed herein and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that the entities listed herein acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, the entities listed herein are an integrated enterprise and should be treated as a single employer because the entities share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the entities listed herein share common management, a centralized control of labor operations, and common ownership or financial control. Claimant also alleges the entities listed herein were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others.

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate

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for all hours worked and the failure to pay overtime. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.” Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee’s separation from employment, pay to the employee all vested but unused vacation and/or paid time off at his final rate of pay. However, as alleged herein, the Company failed to pay all accrued and unused vacation upon termination. And the Company also only paid vested vacation upon separation at the base rate of pay rather than at the required final rate, leading to a violation on each such occasion. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

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FAILURE TO PAY SICK TIME AT PROPER RATE OF PAY

(Labor Code § 246)

Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

Here, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional compensation in the form of shift differentials and/or nondiscretionary bonuses. However, on the occasions that the Aggrieved Employees took sick time and received paid sick leave, the Company only paid sick time at the base rate of pay (not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2)). As such, penalties may be assessed pursuant to Labor Code § 2699.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.” Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties without reimbursement. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 210 and/or 2699.

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PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, [...] any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state total hours worked (the paystubs failed to accurately reflect total compensable hours); failure to accurately state gross wages earned, all deductions, and net wages earned (due to, for example, the failure to pay all required minimum and overtime wages); failure to state the applicable hourly rates (including the accurate overtime rate of pay); failure to state the accurate start and end dates of the pay period; failure to accurately state the name and address of the legal entity that is the employer, and; failure to accurately state the corresponding number of hours worked at each hourly rate. Additionally, the Company’s wage statements directly violated Labor Code § 226(a) each period due to the failure to pay and report premium wages for denied meal/rest breaks under § 226.7. Accordingly, Labor Code §§ 226.3 and 2699 impose civil penalties for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any

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order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to her employment and/or other employees of the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmlfirm.com



LAUBY, MANKIN & LAUBY LLP

November 22, 2022

Submitted Via Online Filing to the LWDA

Sent Via U.S. Mail and Certified Mail

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Please See Attached Service List

Re: PAGA Civil Penalty Claim
Carlos Flores v. Nikkiso America, Inc., et al.
LWDA Case No. LWDA-CM-915580-22

To the Labor and Workforce Development Agency, Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, and Cosmodyne, LLC:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as amended notification of the PAGA civil penalty claim of aggrieved employee Carlos Flores (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, and Cosmodyne, LLC and any affiliated entities (collectively, the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately 2019 through May 2022. Claimant alleges that he and all other employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to which Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Also, at all relevant times, Claimant alleges that she and the Aggrieved Employees were compensated on an hourly basis plus additional earned compensation in the form of nondiscretionary bonuses and other similar payments. However, on the occasions when the Aggrieved Employees worked overtime hours and received additional earned compensation during the same workweek, the Company failed to properly include these amounts in the calculations for Claimant’s regular rate of pay – in violation of California law and which led to the failure to pay proper overtime.

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Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks. Furthermore, on occasions when Claimant worked 10 hours or more in a shift, the Company failed to authorize and/or permit the mandated additional rest breaks.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, vacation wages, meal and rest break premiums, and the Company further failed to pay the Aggrieved Employees for mandated sick time at a rate "calculated in the same manner as the regular rate of pay."

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, needing to acquire and/or provide their own tools to perform their tasks for the Company. Finally, during employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of the entities listed herein and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that the entities listed herein acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, the entities listed herein are an integrated enterprise and should be treated as a single employer because the entities share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the entities listed herein share common management, a centralized control of labor operations, and common ownership or financial control. Claimant also alleges the entities listed herein were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others.

For example, at all relevant times: (1) the entities listed herein were all owned, controlled, and operated by the same parent company, (2) the entities listed herein were all treated as one unit under the banner of the "Nikkiso Clean Energy & Industrial Gases Group," (3) the Company applied the same policies and practices to the Aggrieved Employees, regardless of which specific entity purportedly employed the Aggrieved Employee, (4) many of the entities listed herein are the members/managers of other entities herein (e.g., Cryogenic Industries, Inc. is a member/manager of both ACD, LLC and Cryoquip, LLC; ACD, LLC is a

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member/manager of Cryogenic Industries Service Companies, LLC), (5) many of the entities listed herein share the same common business address, and (6) many of the entities listed herein share the same Chief Executive Officer (Peter Wagner).

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked and the failure to pay overtime. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ..." Labor Code § 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes." Section 12 of applicable IWC Wage Order states in pertinent part: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company's policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee's regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

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FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee's separation from employment, pay to the employee all vested but unused vacation and/or paid time off at his final rate of pay. However, as alleged herein, the Company failed to pay all accrued and unused vacation upon termination. And the Company also only paid vested vacation upon separation at the base rate of pay rather than at the required final rate, leading to a violation on each such occasion. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

FAILURE TO PAY SICK TIME AT PROPER RATE OF PAY

(Labor Code § 246)

Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

Here, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional compensation in the form of shift differentials and/or nondiscretionary bonuses. However, on the occasions that the Aggrieved Employees took sick time and received paid sick leave, the Company only paid sick time at the base rate of pay (not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2)). As such, penalties may be assessed pursuant to Labor Code § 2699.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." IWC Wage Order § 9(b) states "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer." Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties without reimbursement. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states "[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or

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semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 210 and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, [...] any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state total hours worked (the paystubs failed to accurately reflect total compensable hours); failure to accurately state gross wages earned, all deductions, and net wages earned (due to, for example, the failure to pay all required minimum and overtime wages); failure to state the applicable hourly rates (including the accurate overtime rate of pay); failure to state the accurate start and end dates of the pay period; failure to accurately state the name and address of the legal entity that is the employer, and; failure to accurately state the corresponding number of hours worked at each hourly rate. Additionally, the Company’s wage statements directly violated Labor Code § 226(a) each period due to the failure to pay and report premium wages for denied meal/rest breaks under § 226.7. Accordingly, Labor Code §§ 226.3 and 2699 impose civil penalties for these violations.

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PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to her employment and/or other employees of the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call.

Very Truly Yours,



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EXHIBIT “G”